



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Pingley
Operations Manager
City of Elkins
401 Davis Avenue
Elkins, WV 26241

AUG 0 1 2016

Re: Docket No. CWA-03-2016-0048DN
Information Requirement

Dear Mr. Pingley:

Enclosed are an Information Requirement and a separate Administrative Order (Order) issued this date pursuant to Sections 308 and Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1318 and 1319(a).

You should carefully read the contents of the enclosed Information Requirement and the Order and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of this Information Requirement and/or the Order constitutes a violation of Section 309 of the Act, 33 U.S.C. § 1319, and may result in further enforcement action involving civil or criminal penalties.

If you require any information or assistance regarding this matter, please contact Rebecca Crane, Environmental Engineer, at (215) 814-2389, or Yvette Roundtree, Senior Assistant Regional Counsel, at (215) 814-2685. Please inform this Agency of all actions taken with reference to this matter.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Jeremy Bandy, West Virginia Department of Environmental Protection (WVDEP)
Robert Bates, WVDEP





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

RECEIVED

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN THE MATTER OF:

City of Elkins
515 Wilson Street
Elkins, West Virginia 26241

Respondent

:
: CWA-03-2016-0048DN
:
: FINDINGS OF VIOLATION
: ORDER FOR COMPLIANCE
:
:
:

I. STATUTORY AUTHORITY

1. This Order for Compliance ("Order") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of Region III, who in turn has delegated it to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the NPDES permit.
4. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
5. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, sludge, biological material and industrial, municipal and agricultural waste.
6. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "...any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure..."

7. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the West Virginia Department of Environmental Protection ("WVDEP") to issue NPDES permits within the state of West Virginia ("WV").

III. EPA FINDINGS AND ALLEGATIONS

8. The City of Elkins ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
9. Respondent, at all times relevant to this Order, has owned and/or operated a wastewater treatment facility and collection system.
10. Respondent has operated the wastewater treatment facility under NPDES Permit No. WV0020028 ("Permit") which was issued November 18, 2011 with effective date January 1, 2012 through November 17, 2016.
11. The Permit authorizes discharges of treated sanitary wastewater from the wastewater treatment facility through outfall 001 to the Tygart River.

IV. VIOLATIONS

12. Part A.001 of the Permit describes effluent limitations for the Respondent's discharge through outfall 001. The Permit authorizes the discharge of total recoverable copper through outfall 001 at an Average Monthly limit of 0.0054 milligrams/liter ("mg/l") and a Maximum Daily limit of 0.012 mg/L. The measurement frequency is once per month and requires an eight hour composite sample.
13. A summary table of total recoverable copper effluent limit exceedances, as reported on discharge monitoring reports ("DMRs") by Respondent, is attached as Attachment A.
14. The total recoverable copper effluent exceedances identified in Attachment A constitute violations of the Permit and Section 301(a) of the Act.

V. CONCLUSION OF LAW

15. Respondent's failures to comply with Permit effluent limitations constitute a violation of Section 301 of the CWA, 33 U.S.C § 1311.

VI. ORDER

AND NOW, this 28th day of July 2016, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to immediately take all actions necessary to meet the Permit effluent limit for recoverable copper from outfall 001.

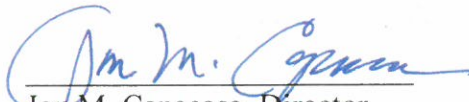
VII. GENERAL PROVISIONS

17. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
18. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
19. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.
20. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.
21. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

VIII. EFFECTIVE DATE

This ORDER is effective upon receipt.

Date: 7/28/2016


Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

Appendix A.

Date	Parameter	Units	Permitted	Reported Value
07/2013	Copper, Average Monthly	Mg/L	0.0054	0.0055
08/2013	Copper, Average Monthly	Mg/L	0.0054	0.0087
10/2013	Copper, Average Monthly	Mg/L	0.0054	0.0084
11/2013	Copper, Average Monthly	Mg/L	0.0054	0.0065
1/2014	Copper, Average Monthly	Mg/L	0.0054	0.0087
5/2014	Copper, Average Monthly	Mg/L	0.0054	0.011
6/2014	Copper, Average Monthly	Mg/L	0.0054	0.0058
7/2014	Copper, Average Monthly	Mg/L	0.0054	0.0127
7/2014	Copper, Daily Maximum	Mg/L	0.012	0.019
8/2014	Copper, Average Monthly	Mg/L	0.0054	0.0069
9/2014	Copper, Average Monthly	Mg/L	0.0054	0.0061
11/2014	Copper, Average Monthly	Mg/L	0.0054	0.0079
1/2015	Copper, Average Monthly	Mg/L	0.0054	0.007
2/2015	Copper, Average Monthly	Mg/L	0.0054	0.0077
5/2015	Copper, Average Monthly	Mg/L	0.0054	0.0066
6/2015	Copper, Average Monthly	Mg/L	0.0054	0.0089
8/2015	Copper, Average Monthly	Mg/L	0.0054	0.0158
8/2015	Copper, Daily Maximum	Mg/L	0.012	0.0158
9/2015	Copper, Average Monthly	Mg/L	0.0054	0.0126
9/2015	Copper, Daily Maximum	Mg/L	0.012	0.0126
10/2015	Copper, Average Monthly	Mg/L	0.0054	0.0139
10/2015	Copper, Daily Maximum	Mg/L	0.012	0.0139
12/2015	Copper, Average Monthly	Mg/L	0.0054	0.0064
12/2015	Copper, Daily Maximum	Mg/L	0.012	0.0064



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

	:	Proceeding under Section 308 of the
City of Elkins	:	Clean Water Act, 33 U.S.C. § 1318
515 Wilson Street	:	
Elkins, West Virginia 26241	:	INFORMATION REQUIREMENT
	:	
Respondent	:	
	:	
	:	

I. STATUTORY AUTHORITY

1. This Information Requirement is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 308 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1318. The Administrator of the EPA has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division of EPA Region III, who in turn has delegated it to the Associate Director of the Office of National Pollutant Discharge Elimination System ("NPDES") Permits and Enforcement. EPA hereby requires the City of Elkins ("City" or "Respondent") to provide the information specified below.

II. STATUTORY AND REGULATORY BACKGROUND

2. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
 - (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) Any requirement under Section 308 of the CWA, 33 U.S.C. §1318; or
 - (d) Carrying out Sections 305, 311, 402, 404, and 504 of the CWA, 33 U.S.C. §§ 1315, 1321, 1342, 1344, and 1364.
3. Failure to respond as directed to a CWA Section 308 requirement is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or

false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

4. You may, if you desire, assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. Part 2 Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information required herein when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. Chapter 35. (See 5 C.F.R. Section 1320.3(c)).

III. INSTRUCTIONS

5. Provide a separate narrative response for each question contained in this Information Requirement and for each subpart of each question. Precede each answer with the corresponding number of the question to which it responds.
6. Identify each person responding to each question contained in this Information Requirement on behalf of the Respondents, as well as each person consulted in the preparation of the response.
7. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question.
8. Indicate on each document produced in response to this Information Requirement, or in some other reasonable manner, the number(s) of the question(s) to which it corresponds.
9. If required information or documents are not known or are not available at the time of your response to this Information Requirement, but later become known or available, the Respondents must supplement its response to EPA. Moreover, should the Respondents find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents the facts; the Respondents must provide EPA with a corrected response as soon as possible.
10. If a question asks for a date or figure (e.g., date of service, dollar amount, volumetric capacity, etc.), you should provide a good faith estimate if you cannot provide the exact figure.
11. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question(s).

12. All submissions provided pursuant to this requirement shall be signed and dated by a responsible official of Respondents and include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signed _____
Title _____
Date _____

13. Submit a copy of your response to:

Ms. Rebecca Crane (3WP42)
NPDES Enforcement Branch
Water Protection Division
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

And

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304

14. If you have questions regarding this Information Requirement, you may contact Ms. Rebecca Crane of the NPDES Enforcement Branch at (215) 814-2389 or Ms. Yvette Roundtree of the Office of Regional Counsel at (215) 814-2685.

IV. REQUEST FOR INFORMATION

Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, provide the following information in accordance with the timeframe specified in this Information Requirement:

15. Beginning within 5 days of the effective date of this Information Requirement, Respondent shall sample and analyze leachate from Elkins Landfill for total recoverable copper using the methods described in Permit Section C.17 once every 14 calendar days for a total of 7 samples.
16. Within 5 days of completion of final sampling activity, Respondent shall compile and submit the chain of custody and laboratory analysis for each sample and analysis described in Paragraph 15 to EPA and WVDEP pursuant to Paragraphs 12 and 13.
17. Beginning within 5 days of the effective date of this Information Requirement, Respondent shall sample and analyze Midland Public Sewer District's influent line at the wastewater treatment plant and monitor for total recoverable copper using methods described in Permit Section C.17 once every 14 calendar days for a total of 7 samples.
18. Within 5 days of completion of final sampling activity, Respondent shall compile and submit the chain of custody and laboratory analysis for each sample and analysis described in Paragraph 17 to EPA and WVDEP pursuant to Paragraphs 12 and 13.
19. Beginning within 5 days of the effective date of this Information Requirement, Respondent shall sample and analyze wastewater at the following five (5) locations of the wastewater treatment plant: 1) point of entry to the 1.925 million gallon oxidation ditch; 2) point of discharge from the 1.925 million gallon oxidation ditch; 3) point of entry to the 1.2 million gallon circular clarifier 4) point of discharge from 1.2 million gallon circular clarifier and 5) outfall 001; and monitor for total recoverable copper using methods described in Permit Section C.17 once every 7 calendar days for a total of 5 samples.
20. Within 5 days of completion of final sampling activity, Respondent shall determine and submit to EPA and WVDEP, pursuant to Paragraphs 12 and 13 above, the percent of removal of total recoverable copper from locations 1) to 2), 2) to 3), 3) to 4), 4) to 5), and from 1) to 5) for each of the five samples of Paragraph 19.
21. Within 5 days of completion of final monitoring activity, Respondent shall compile and submit in a bulk submission the chain of custody and laboratory analysis for each monitoring activity described in Paragraph 19 to US EPA and WVDEP officials pursuant to Paragraphs 12 and 13.
22. Respondent shall conduct a translator study to determine the fraction of total recoverable dissolved copper in the Tygart River downstream from Outfall 001 no later than 15 days after the effective date of the Information requirement and for a duration of 6 months. Respondent shall refer to the document The Metals Translator: Guidance For Calculating A Total Recoverable Permit Limit From A Dissolved Criterion EPA 823-B-96-007, June 1996 for guidance. Respondent shall collect weekly samples for 6 months, according to USEPA Method 1669, which characterize completely mixed effluent plus receiving water

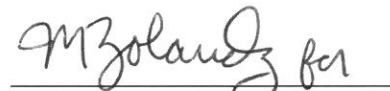
downstream of the discharge. Samples should be collected from the effluent and the upstream receiving water to quantify metal loading and background concentrations. Respondent shall submit to EPA and WVDEP pursuant to Paragraphs 12 and 13 the results of the translator study no later than 7 months after the effective date of the Information Requirement.

23. No later than 15 days after the effective date of the Information Requirement, Respondent shall submit to EPA and WVDEP pursuant to Paragraphs 12 and 13 copies of discharge monitoring reports required by Permit Sections A.IU06 and Section E for the time period July 2013 to December 2015.

VIII. EFFECTIVE DATE

This Information Requirement is effective upon receipt.

Date: 8-1-16



David B. McGuigan, Ph.D.

Associate Director

Office of NPDES Permits and Enforcement